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**UNITED STATES BANKRUPTCY COURT
 EASTERN DISTRICT OF CALIFORNIA**

In re:
 RUSSELL BUSHNELL, JR.,

 Debtors.

Case No. 12-18869-A-7

Chapter 7

DC No. KDG-2

**MOTION FOR ORDER
 AUTHORIZING TRUSTEE TO
 SELL PERSONAL PROPERTY
 SUBJECT TO HIGHER AND
 BETTER BID**

Date: April 25, 2013
 Time: 1:00 p.m.
 Place: U.S. Bankruptcy Court
 1300 18th Street, First Floor
 Bakersfield, California
 Judge: Fredrick E. Clement

Jeffrey Vetter, Chapter 7 Trustee ("Trustee"), respectfully represents:

I. INTRODUCTION

The Trustee moves the court for authority to sell the estate's right to payment under a land sale contract between Russell Bushnell, Jr. ("Debtor") and Lance Rogers ("Buyer") related to the real property located at 1245 Orchard Street, Ridgecrest, California ("the Real Property") for \$5,000.00. Although the land sale contract ("the Contract") was rejected by operation of 11 U.S.C. § 365(d)(1), Buyer has retained possession of the Real Property, which obligates Buyer to make all payments due under the contract. 11 U.S.C. § 365(i)(2)(A). Although the Contract

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1 does not state a specific term, the Contract requires payment of an additional \$9,800.00 through
2 payments of \$300.00 per month. The Trustee believes that the sale of the estate's interest in the
3 Contract is in the best interest of Debtor's estate because it will yield \$5,000.00 for distribution
4 by the estate, based on (1) the offer received from Buyer, (2) the information included in
5 Debtor's schedules, and (3) the information received from the Debtor and Buyer.

6 **II. JURISDICTION, AUTHORITY, AND SUMMARY OF ARGUMENT**

7 The Court has jurisdiction under 28 U.S.C. § 1334 and 11 U.S.C. § 363. This is a core
8 matter under 28 U.S.C. § 157(b)(2)(A) & (N).

9 11 U.S.C. §363(b)(1) authorizes sales of property of the estate "other than in the
10 ordinary course of business." To invoke Section 363(b)(1) the movant must articulate a
11 business justification for his actions. *In re Lionel Corporation*, 722 F.2d 1063, 1071 (2nd Cir.
12 1983). Liquidation of assets of the estate is a proper business purpose for the Chapter 7
13 trustee. 11 U.S.C. §704(a)(1).

14 Sale is proper in one of three ways: (1) sale through confirmed plan, 11 U.S.C.
15 §1123(a)(5)(D), 1322(b)(10); (2) public auction, Fed. R. Bankr. P. 6004(f)(1); or (3) private
16 sale with opportunity for overbid, Fed. R. Bankr. P. 6004(f)(1), *In re Mama's Original Foods,*
17 *Inc.*, 234 B.R. 500, 505 (Bankr. C.D. Cal. 1999) (court acts as auctioneer but must offer
18 overbid opportunity). March, Ahart and Tchaikovsky, California Practice Guide: Bankruptcy,
19 Use, Sale & Lease of Estate Property §§14:596-14:600 (The Rutter Group 2010).

20 Here, the Trustee requests authority to sell the estate's interest in the Contract at a
21 private sale with an opportunity for overbid. The bidding instructions are detailed in the Notice
22 of Hearing filed concurrently with this Motion.

23 The Contract was rejected by operation of 11 U.S.C. § 365(d)(1) when Trustee did not
24 assume the contract within 60 days of the petition date. 11 U.S.C. § 365(i)(2) provides that a
25 buyer under a land sale contract that retains possession of the property in question shall
26 continue to make all payments due under the land sale contract and the trustee shall deliver title
27 to the buyer of under the land sale contract. Further, 11 U.S.C. § 365(j) provides that a buyer
28 of a rejected land sale contract that does not retain possession of the property has a lien against

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1 the property for the portion of the purchase price paid under the contract.

2 The trustee has not retained a real estate broker and no commission on the sale will be
3 paid.

4 **III. FACTUAL BACKGROUND**

5 Jeffrey Vetter is the Trustee in the Chapter 7 case filed by Debtor. Debtor filed for
6 relief under Chapter 7 on October 22, 2012.

7 **A. The Real Property and Land Sale Contract.**

8 The Real Property is a lot located at 1245 Orchard Street, Ridgecrest, California. The
9 Real Property was sold by Debtor to Buyer under the Contract in August 2011 for \$18,000.00.
10 Under the terms of the Contract, Buyer was to pay Debtor \$18,000.00 by paying \$2,500.00 as a
11 down payment and \$300.00 per month thereafter until the purchase price was paid in full.
12 Debtor valued the Real Property at \$18,000.00 in Debtor's *Schedule A – Real Property* and
13 noted that the Real Property was subject to the Contract in Debtor's *Schedule G – Executory*
14 *Contract and Unexpired Leases*. Copies of Schedule A and Schedule G are attached to the
15 Exhibits as Exhibits "A" and "B." Debtor's schedules listed no liens or other interests held by
16 any other party. Additionally, Debtor did not claim an exemption in the Real Property. Copies
17 of Schedules C and D filed by Debtor are attached as Exhibits "C" and "D" to the Exhibits.

18 **B. Current Status of Land Sale Contract and Real Property**

19 Buyer has paid \$8,200.00 of the purchase price to Debtor and Trustee under the
20 Contract. Trustee did not assume the Contract within 60 days of the petition date. Therefore,
21 the Contract was rejected by operation of law. *See* 11 U.S.C. § 365(d)(1). Buyer has retained
22 possession of the Real Property and continued to make payments to Trustee as required by the
23 Contract. Therefore, Buyer has the right to continue to possess and pay for the Real Property
24 under the Contract under 11 U.S.C. § 365(i)(2).

25 Buyer has improved the Real Property since the property was purchased by Buyer in
26 2011. Buyer has put a mobile home valued at \$5,200.00 on the Real Property. Buyer planted 5
27 trees and installed a 6-foot wood fence on the property costing the Buyer about \$1,800.00.

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1 **C. The Offer and Purchase Terms**

2 The Buyer offered to purchase the estate's interest in the Contract for \$5,000.00. The
3 Trustee accepted the Buyer's offer and believes that the offer represents the fair market value of
4 the estate's interest in the Contract, subject to higher and better bid at the time of the hearing.

5 Buyer made a deposit of \$500.00 which is being held by the Trustee. Buyer intends to
6 pay the remaining balance after approval of the sale by the Court.

7 The Trustee believes that the sale of the estate's interest in the Contract to Buyer is in
8 the best interest of the estate because it will yield \$5,000.00 to be distributed to creditors
9 because there are no transaction costs, lien holders, or exemptions to pay from the proceeds
10 received from the sale.

11 **IV. ARGUMENT**

12 Trustee requests authorization to sell the estate's interest in the Contract to Buyer.
13 Trustee believes that the sale is an appropriate exercise of his business judgment. Trustee
14 believe that the sale is in the best interest of the estate in his business judgment because Buyer
15 has the right to continue to pay the estate under the Contract under 11 U.S.C. § 365(i)(2). This
16 would result in the payment of \$9,800.00 over about 33 months. Trustee believes that
17 accelerating payment under the Contract at a discount is in the best interest of the estate so that
18 creditors do not have to wait for almost 3 years before they receive a distribution from the
19 estate.

20 Trustee does not believe that he can sell the Real Property free and clear of Buyer's
21 interest because Buyer has exercised its right to possession and payment under 11 U.S.C. §
22 365(i)(2). However, in the case that Trustee could sell the Real Property free and clear of
23 Buyer's interest in the Real Property, Buyer would have a lien of at least \$9,800.00 under 11
24 U.S.C. § 365(j). Also, Trustee believes that Buyer would have a claim for the improvements he
25 has made to the Real Property, which could be as much as \$7,000.00. Finally, Trustee would
26 have to pay a real estate broker to market and sell the Real Property at an estimated cost of 6%
27 of the sale price. Therefore, the estate could be left with less than \$200.00 from the Real
28 Property if the Debtor's estimate of value of the Real Property is accurate at \$18,000.00 and

For the foregoing reasons, Trustee believes it is an appropriate exercise of business judgment to sell the estate's interest in the Contract to Buyer for \$5,000.00.

The Trustee represents that the proposed sale was negotiated in good faith and at arm's length, is fair and equitable, is in the best interest of the bankruptcy estate, and represents a reasonable recovery for the bankruptcy estate. The Trustee represents that the sale is an appropriate exercise of his business judgment.

1. the Motion be granted;
2. he be authorized to sell the estate's interest in the Contract to Lance Rogers ("Buyer") for \$5,000.00, subject to higher and better bids at the hearing;
3. he be authorized to execute all documents necessary to effectuate the sale of the Contract to Buyer, or to the highest bidder(s) at the hearing, including conveying title to the Real Property;
4. the 14 day stay of order imposed by rule 6004(h) Federal Rules of Bankruptcy Procedure, be waived and not applicable to the order; and
5. for such other relief as the court determines is just and proper.

Dated: April 4, 2013

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By /s/ Lisa Holder
LISA HOLDER, Attorneys for
Jeffrey Vetter, Chapter 7 Trustee